Filed 7/23/19 In re L.M. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.M., et al., Persons Coming Under the Juvenile Court Law.	B293531 (Los Angeles County Super. Ct. No. 18CCJP04793A-B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Edward. M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Pete R. Navarro, Commissioner. Affirmed.

Law Offices of Vincent W. Davis & Associates, Stephanie M. Davis, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Veronica Randazzo, Deputy County Counsel, for Plaintiff and Respondent.

Edward M. (father) appeals from the dependency court's jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b)(1),[1] as well as dispositional orders removing minors L.M. (daughter) and P.M. (son) from father's custody under section 361, subdivision (c)(1). The Los Angeles County Department of Children and Family Services (Department) contends the findings and orders are supported by substantial evidence. We affirm the jurisdictional findings and the removal order.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have been separated since 2013, sharing custody of their two children, daughter (born October 2008) and son (born February 2011). Father also has an adult daughter, who reportedly ran away from father in 2004 to live with her mother in Texas.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The family had a prior referral with the Department in May 2012, when mother took the children to Sweden for a month and father filed a missing persons report. When mother and the children returned to Los Angeles, they were stopped by security at the airport. According to mother, she left with the children after father suffered a manic episode, but had informed father that she and the children were in Sweden. Father came to the police station, where mother and the children had been taken after landing. After both parents spoke to the social worker, the whole family went home together. The Department concluded mother and father were appropriate with the children and there was no evidence of abuse or neglect. Although father was diagnosed with bipolar and Post-Traumatic Stress Disorder (PTSD), he was compliant with mental health services and medication. Father's psychiatrist said father was stable, capable of caring for his children, and the parents were willing to participate in conjoint therapy.

The current case started with a referral to the Department on July 3, 2018. On that date, father and the children arrived at the Los Angeles Police Department's Central Station, and due to father's behavior, a Systemwide Mental Assessment Response Team (SMART)[2] was called.

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[2] According to the Department's brief, "The SMART program is a police-mental health co-responder developed to supplement the LAPD's Mental Evaluation Unit (MEU). The program assists uniformed officers to effectively respond to and link individuals in crisis to appropriate mental health

The SMART team evaluated father and placed him on a 5150 hold.[3] Mother was contacted to take custody of the children, and she reported that she and father share custody of the children, and they were spending time with him this week. Mother also reported father was diagnosed with bipolar disorder, had not taken his psychotropic medication for the past five years, and smokes marijuana regularly.

On July 12, 2018, father returned a call from the social worker. He told the social worker she had 20 seconds to speak. When she explained she could not disclose information over the phone, he asked her to stop talking and told her to look into the history and the 2012 incident, in which father claimed mother kidnapped the children. He demanded to know who called in the referral, and when the social worker explained that the information was confidential, he refused to speak with the social worker, provided an e-mail address, and stated he would be contacting his attorney.

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services. The program is also supported by the Los Angeles County Department of Mental Health. (LAPD, Crisis Response Support Section Mental Evaluation Unit, http://www.lapdonline.org/detective_bureau/content_basic_view/51704 (as of April 5, 2019).)"

[3] "Sections 5150 and 5151 permit a person to be taken into custody and detained for 72 hours when there is probable cause he or she is a danger to himself or others as a result of a mental disorder." (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1552, fn. omitted.)

The social worker interviewed mother on July 13, 2018, while the children were at father's home. Mother met father when she was an exchange student at UCLA. Father was a police officer with the Compton Police Department for about eight years and then was employed with Chevron Oil Company. In 2012, father's supervisor at Chevron had concerns about father's mental health, and he was placed on a section 5150 hold. According to mother, father was diagnosed with PTSD and bipolar disorder, acute manic state with psychotic tendencies. Father subsequently sued Chevron for wrongful termination. Discussing the family's prior involvement with the Department in 2012, mother said she went to Sweden with the children because she was tired of father's controlling and irrational behavior due to his mental illness and she feared for her life and the lives of her children. Father filed a missing persons report, which led to mother and the children being stopped when they returned from Sweden.

Mother moved out of the father's home in 2013, and there have been ongoing divorce proceedings for four years. In May 2018, the family court ordered joint physical custody, with the children changing residences on Saturdays and Wednesdays. The order also authorized mother to take the children to Sweden for two weeks every summer. Mother told the social worker she had an itinerary to leave with the children the following day, but father had the children's passports and mother was hoping he would give them to her.

She was planning to pick the children up from father's home at 9:00 a.m.

Mother explained that father has a diagnosis of bipolar with mania episodes. She did not know if father was receiving mental health services or on any psychotropic medications. She reported father has about two mania episodes a year, lasting between three and six weeks long. He sleeps very little during those episodes and becomes irrational and difficult to reason with. Mother had learned to deal with father's mental illness and the behaviors that go along with it. Father usually left the children with her during the mania episodes, and she wasn't sure why he did not this time. The children had not told mother they felt unsafe with father or afraid of him. Mother did not know if she would seek modifications to the family law order, as it was put into place recently and she was afraid modifications might trigger father.

Speaking about the July 3, 2018 incident which prompted the investigation, mother said she received a call from the police station and went to pick up the children. The officers had concerns because father seemed to be paranoid and incoherent. Mother was aware father was placed on a 5150 hold, but did not know where he was taken or any details about his discharge treatment plan. Mother reported the police went to father's home to check if there were any guns, and mother did not know if he currently owns any guns. She believed father used marijuana because once she

smelled marijuana on the children's clothes when they returned from father's home.

On July 16, 2018, the social worker interviewed son and daughter separately at mother's home. The son reported that father had told him not to yell at girls, but father was always yelling at girls and at mother. The son was not afraid of father, but sometimes did not feel safe with him because father would yell and scream at people and say bad words in the son's presence. He also reported father smoked "leaf smoke" in the children's presence. He denied seeing any unusual behavior from father, other than saying bad words, and he did not know why father went to the police station earlier that month.

The daughter was in good spirits during her interview with the social worker. She said she was looking forward to going to Sweden on Thursday now that father found her brother's passport. She denied being afraid of father, but explained she did not feel safe with him because he was "all over the place" and constantly yelling and saying bad words at people in public. She reported that on the day of the interview, father yelled at mother and said mean things about her and her family. She said father would not tell the truth and would then blame other people. When asked about the July 3, 2018 incident, she said father went to the police station to see a friend who was a police officer but he was dead. The daughter explained that father used to be a police officer and saw his friend die.

The social worker spoke with mother after interviewing the children, and mother reported that father was angry about the Department being involved and wanted to know who called the Department. He had sent many angry messages to her cell phone, and was yelling at her in front of the children. Still, mother was hopeful that father would give her the son's passport and she would leave for Sweden on Thursday. The social worker informed mother of the possibility that the children might be detained from father, and mother responded that she loves her children and is willing to protect them from harm if a detention is filed.

On July 24, 2018, a maternal aunt who was a doctor living in Sweden told the social worker by phone father was not a bad person, but he was unstable when he had a manic episode. She acknowledged she did not have a good relationship with father because he was angry at her and mother's family for taking the children to Sweden in 2012.

Removal order and detention hearing

On July 27, 2018, the Department obtained court authorization to remove the children from father's custody. The social worker arrived at father's home with two police officers to serve him with the removal order, and father arrived shortly thereafter. Father was verbally abusive and appeared to be recording the encounter with his cell phone. He was cursing and accusing the social workers and officers of racism, because he was a black man and mother was

white. He threatened to sue the social worker and the Department, told all three to "get off my property," and referring to the social worker, he told the officers, "take that stupid bitch with you."

On July 31, 2018, the Department filed a dependency petition, alleging under section 300, subdivision (b)(1), that father had been involuntarily hospitalized and failed to take psychotropic medications, and that his mental and emotional problems rendered him incapable of providing regular care and supervision to the children.

Father appeared at the August 1, 2018 detention hearing. He rejected appointed counsel and sought to represent himself. The court denied his request, but granted a continuance to permit father to identify private counsel. When the court asked how long father needed to retain private counsel, father responded that he was going to try to get a JAG (judge advocate general), because he was a military vet. He continued, "Alternatively, I can contact the court if I can get one of my tribesmen. I'm an Igbo tribesman from Nigeria so if I can get one of them to do it for a discounted price, I'll contact the court." The court found a prima facie case that there was a substantial risk to the children's health and safety if they remained in father's home, and that there were no reasonable means to protect them without removal.

When the court ordered that father's visitation would be monitored, father stated, "I won't be there. I'm not going to be treated as a criminal. I am a military vet. I have no

background. The only people that ever charged me with this nonsense are racists, corrupt cops, and [the Department]."

Jurisdiction and Disposition Report

The Department filed its jurisdiction and disposition report on August 31, 2018. The report stated father had not cooperated with the Department's efforts to investigate the matter and had also not attempted to reach the social worker regarding his children. Attempts to reach father by phone, e-mail, and mail went unanswered. The Department conducted additional interviews of the children, mother, other relatives, and school officials. Son and daughter both had a good trip to Sweden, and had not visited with father since before they left for Sweden. The son reported that he sees his father at the park when he is at summer camp, and does not feel safe. When asked if father ever says mean things about mother, the son responded, "He says my mom's a liar and kidnapped us, which is not true." He answered "yes" when asked if his father yells at his mother. The daughter reported she could not remember the mean things father said about mother because it had been a long time. When asked if father ever said mean things to strangers, she responded "[a] lot," and said it made her "[r]eally uncomfortable." When asked if she wanted to see her father, the daughter said "Sometimes, but not around my mom. When he sees her, it just starts a fight."

Mother gave more detail about her history with father. They met in 2000 or 2001, and were married in May 2006. She denied knowing about father's mental health issues until 2012, but reported that he had been placed on 5150 holds four times before she met him. Mother stated that in 2012, father got very sick and had a manic episode that escalated. Father's supervisor at Chevron took him to the emergency room. Father wanted to leave, but he was put in four point restraints. According to mother, father could "be verbally (abusive) and rude and insulting, but he had never been violent with me or the children. He can be very demanding during these times (of mania) and it's difficult to reason with him." He went to Del Amo Hospital for a week, and came out a different person. He blamed mother for the hospitalization and became very jealous and mistrustful. The psychiatrist thought father suffered bipolar disorder and he was given Risperidone. Mother did not know if he took the medication as prescribed, and she reported that at one point, father flushed the medicine down the toilet, saying his psychiatrist said he did not have to take it. Around the same time, father wanted to make a large real estate investment even though they had just purchased their home. Mother took her checkbooks with her to work, and father called demanding the checks. At that point, she decided it would be best to take the children to stay in Sweden. She and the children stayed in a hotel that night and left for Sweden the next day. She called and e-mailed father when they got to Sweden and stayed there for six weeks. During

that time, father filed a missing persons report for the children, so when they arrived at LAX, the police took them to the station. Mother explained about father's prior hospitalization, and the police went to check on father. Father came to the police station, the social worker spoke with both mother and father, and "we ended up going home with him that night and it was okay."

Mother moved out and currently lives in a gated apartment complex. Since the dependency case started, she has instructed the guard not to let father in. Prior to his most recent hospitalization, father had been following the visitation schedule ordered by the family court. Mother thought that the recent order permitting mother to travel to Sweden was stressful for father. He did not appear at the family court hearing and claimed he had not been properly informed. Mother told the social worker father had the children's passports, and would not give them to mother until the last minute to maintain control. When mother and the children went to father's house on July 14, 2018, father claimed the son's passport had been stolen. Mother was going to get emergency passports when father told her to go to father's girlfriend's house. The son's passport was found in the girlfriend's neighbor's trash can, but father would still not relinquish it until mother's family law attorney sent him an e-mail saying mother did not call the Department. Mother also said father calls every day and sometimes leaves voicemails, but she does not listen to them. She has

considered getting a restraining order and will do whatever her family law attorney recommends.

Maternal grandfather called the social worker and told her he had received irate and threatening messages from father, and is not returning his calls. Maternal grandfather said he was afraid father would show up at LAX when mother and the children returned from Sweden, but was not otherwise concerned about the children's safety in mother's care.

The social worker also interviewed the principals at the children's former and current elementary schools. The former principal explained that there had been a verbal altercation between father and the parent of another child, where father accused the other father of inappropriately touching his daughter. Father obtained a TRO against the other parent, but no permanent restraining order was granted. According to the former principal, father did not like how the other father put his hand on daughter's shoulder and said "I like your jacket." Father asked for the children to be transferred because he felt the other father was stalking the daughter. The principal at the current school confirmed that the children had transferred after father had an altercation with another parent. She did not have much interaction with either parent.

Adjudication hearing

On September 24, 2018, the scheduled adjudication hearing date, father had not hired private counsel, but asked the court to appoint counsel for him. The court did so, and continued the hearing to permit counsel to prepare. Responding to a request from father, the court directed the Department to interview father and set up a written visitation schedule.

After the court continued the adjudication, the Department made multiple attempts to reach father by phone, e-mail, and letter. Father did not respond until 6:30 p.m. on October 14, 2018. The investigator summarized the phone interview with father in a last minute information report. Father was adamant that he did not have any mental health issues, but instead suffers from neurological problems caused by a traumatic brain injury he suffered while in the military. He told the investigator he has had the injury since 1984, and he also had "post-concussion syndrome." According to father, every time he has been in the hospital on a 5150, it was after an accident. He claimed he has never taken nor been prescribed psychotropic medication; instead, his VA doctor told him that if he started taking sleep medication, he could go back to work. He acknowledged he is unable to sleep, and that this was a major issue in the past. "The psychologist says I can't sleep because of mania, but when I [go to] the hospital or the VA,

they always let me out. It's the private hospitals that say I'm a 51/50." Father believes mother is using "all of this" to get the kids away from him, and that there are racial issues also. He also believes his issues are a result of him reporting corrupt police officers in Compton 25 years ago and being a whistleblower at Chevron.

The last minute information also described a visit between father and the minors. It described both children's excitement at learning their father was in the Department office waiting to see them. The son was so excited he started to run through the parking lot and had to be redirected for his safety. Upon seeing their father, both children ran to him and embraced him. Father was happy and conversed with both children warmly, discussing topics like school and sports. Father did not mention mother to the children. The family's interactions were genuine and endearing, and father confirmed the date and time for the next visit, expressing appreciation for being able to see his children.

The last minute report gave the Department's assessment that "father does have some sort of unresolved and untreated mental health issue." Based on father's belief that he has no mental health diagnosis and his problems stem from external sources like mother and his former employer, the Department believed that even if father was evaluated and diagnosed, he would not follow through with recommended treatment and medication. Therefore, the Department continued to recommend finding jurisdiction, and terminating the case with a family law custody order

giving sole legal and physical custody of the children to mother.

The adjudication hearing took place on October 16, 2018. After admitting the Department's reports into evidence, the court heard argument from counsel. Father's counsel argued there was no evidence of nexus between father's mental health issues and risk of harm to the children. Counsel for minors and for the Department both argued there was sufficient evidence to support a finding that the children were at risk of harm. The court acknowledged that while mental illness alone would be insufficient to support jurisdiction, in this case, "there is evidence that that [*sic*] father's inability or failure to properly follow his medication protocol has resulted in the situation in which the children were placed in a dangerous situation." The court struck petition allegations regarding mother's failure to protect, and amended the allegation against father before sustaining it. Rather than stating that father's mental and emotional problems rendered him incapable of providing regular care and supervision, the sustained allegation stated that father's problems impaired his ability to provide care. On disposition, the court observed that this wasn't a case where father simply needed to take a parenting class, but rather that father needed to acknowledge and deal with his underlying illness. The Department's recommendation was to terminate jurisdiction with an order granting mother sole legal and physical custody. Minor's counsel agreed with the Department and

with the court, pointing out that until father was willing to engage in services, it was in the family's best interests to terminate jurisdiction, with a family law order that would focus individual therapy and medication compliance. Father argued that he had admitted to suffering from PTSD, but because there was no risk to the children, he was asking to keep the family law order of joint physical and legal custody in place, with unmonitored visits.

The court found clear and convincing evidence of substantial danger if the children were to return to father's custody. It announced jurisdiction would be terminated, but stayed pending receipt of a family law order giving mother sole legal and physical custody of the children, with monitored visits for the father.

DISCUSSION

Father contends the court's jurisdictional finding under section 300, subdivision (b)(1), is unfounded. He also contends the court's dispositional order removing the children from his custody was not supported by substantial evidence, and that there was inadequate support for the court's finding that there were no reasonable means short of removal to ensure the children's safety in father's custody. The Department argues that there was sufficient evidence to support the court's order sustaining the petition as amended and removing the children from father's custody. The Department also argues that because father did not object to

the court's finding that there were no reasonable means to protect the children without removing them from father's custody, that argument is waived on appeal.

Standard of review

"[W]e review both the jurisdictional and dispositional orders for substantial evidence. [Citation.] In doing so, we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. [Citation.] But substantial evidence 'is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] . . . "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." [Citation.]' [Citation.]" (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.) Substantial evidence can be based on inferences that are grounded in logic and reason, but not speculation or conjecture alone. (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419–420; *In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1093; *In re James R.* (2009) 176 Cal.App.4th 129, 135 (*James R.*).) To obtain reversal, the appealing party must show there is no evidence of a

sufficiently substantial nature to support the findings or order. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

Jurisdictional findings

Jurisdiction under section 300, subdivision (b)(1), is warranted if there is a preponderance of the evidence that "'[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child,' the willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or the inability of the parent to provide regular care for the minor due to the parent's mental illness, developmental disability or substance abuse. (§ 300, subd. (b)(1).)" (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560–561 (*Joaquin C.*).) A substantial risk of serious physical harm can be established by proof of an "identified, specific hazard in the child's environment," or by the failure to rebut the presumption that the "absence of adequate supervision and care poses an inherent risk to [the] physical health and safety" of a child of "tender years." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics omitted; see also *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 767 [substance abuse is prima facie evidence of a parent's inability "to

provide regular care resulting in a substantial risk of harm"].)

Section 300, subdivision (b)(1), does not require neglectful or blameworthy conduct by a parent, only an actual inability to provide the necessary supervision or protection. (*In re R.T.* (2017) 3 Cal.5th 622, 624, 628–630.) Nothing in *In re R.T.* alters or eliminates the requirement that the Department must prove that the parent was unable to provide adequate care and supervision to the child. (*Joaquin C., supra*, 15 Cal.App.5th at p. 561.) The Department must demonstrate the following three elements: "(1) one or more of the statutorily-specified omissions in providing care for the child (inability to protect or supervise the child, the failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or inability to provide regular care for the child due to mental illness, developmental disability or substance abuse); (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness. [Citations.]" (*Ibid.*)

"Although 'the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm' [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection. [Citations.] A parent's past conduct is a good predictor of future behavior." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133, italics omitted.) "To establish a

defined risk of harm at the time of the hearing, there 'must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]' [Citation.]" (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146.)

As recognized in numerous cases, a parent's mental illness alone is insufficient as a basis for dependency jurisdiction under section 300, subdivision (b)(1). (*In re A.L.* (2017) 18 Cal.App.5th 1044, 1049–1051 [finding insufficient evidence that mother's schizophrenia created a substantial risk of physical harm for her children]; *In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226 (*Travis C.*) [when mother's mental illness went untreated, she placed the children at risk of harm]; *Joaquin C.*, *supra*, 15 Cal.App.5th at p. 563 ["mental illness is not itself a justification for exercising dependency jurisdiction over a child"]; *In re James R.*, *supra*, 176 Cal.App.4th at p. 136 [mental illness does not create a presumption of harm, and agency bears the burden of demonstrating how minors have been harmed or are at risk of harm]; *In re David M.* (2005) 134 Cal.App.4th 822, 829–830 [finding no evidence of a specific, defined risk of harm to infant and toddler resulting from parents' mental illness].)

Father argues that the Department did not carry its burden of proving he suffered a mental illness or that his illness impaired his ability to supervise or protect the children, placing them at risk of harm. First, he argues the only evidence of his purported mental illness came from mother, and there was no evidence of a current mental health diagnosis. Second, even if there was evidence he

suffered from a mental illness, the children were healthy, safe, and well cared for, and so there was insufficient evidence to find a causal link between his mental illness and any harm or risk of harm to the children. Third, he argues there was no evidence to support the trial court's determination that his inability or failure to follow his medication protocol resulted in a danger to the children. Although this was a close case that may have benefitted from additional investigation and documentation by the Department, we find sufficient evidence to support the court's determination that father's mental and emotional problems posed a substantial risk of serious physical harm to the children. (See *Travis C.*, *supra*, 13 Cal.App.5th at p. 1226.)

Father argues all the evidence about his alleged mental illness came exclusively from mother, who simply wanted full custody of the children. He argues that mother's statements do not rise to the level of substantial evidence. Father attempts to discredit mother's statements about his mental health, arguing that she had not lived with him since 2013 and made contradictory statements about earlier manic episodes and marijuana use. It was distinctly within the purview of the dependency court to decide whether mother's statements were credible. (*In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992.) In addition, there was other evidence to support the court's determination that father was suffering from mental and emotional problems, regardless of whether he had been formally diagnosed with a mental

illness. Father himself told the social worker he has a secondary diagnosis of PTSD, and that during a wisdom tooth removal while he was in the military, he suffered a traumatic brain injury and he has a post-concussion syndrome. He attributes his section 5150 hospitalizations to those injuries, but he did not deny that he was hospitalized. When father went to the police station with both children on July 3, 2018, his statements about the Mexican Mafia and his behavior led the police to call his wife and the SMART team, which placed him on a section 5150 hold. Those facts, considered together with statements by father and mother, constituted substantial evidence of father's mental and emotional problems.

We also find a sufficient nexus between father's mental and emotional problems—for which he denied needing any treatment—and a substantial risk the children would suffer serious harm. We recognize there is no evidence that father was ever physically aggressive towards mother or the children, but there was substantial evidence based upon which a court could reasonably infer that father's proclivity for verbal aggression placed the children at risk of harm. Father was verbally aggressive towards mother and many other people, including strangers and law enforcement. At least three instances of verbal aggression were well-documented in the Department's reports. Father yelled and cursed at the social worker who served the removal orders on father. While the case was underway, father left threatening messages on mother's phone and maternal

grandfather's phone. The children stated that father yells at mother and sometimes at strangers. After father was involved in a verbal altercation with the parent of another child at the children's prior school, and even obtained a TRO against the other parent, father requested the children to be transferred to a different school. Father has a history of verbal aggression that makes the children feel unsafe. Considering father's acts of verbal aggression in the context of his history of mental health hospitalizations, we find substantial evidence of a non-speculative risk that the children could suffer serious physical harm.

We find the evidence of father's actions adequate to support the court's determination that if left untreated, father's mental illness placed the children at risk of physical harm. The children were only seven and nine years old when father went to the police station in July 2018, concerned that the Mexican Mafia was after him. At the detention hearing, father stated he would seek private counsel, either a JAG officer or an Igbo tribesman. He refused to speak to the Department or to even visit his own children until after the September 24, 2018 hearing at which the court appointed counsel for him. The Department argued, and the court agreed, that the children would be at risk unless the court sustained the petition and removed the children from father's custody, because they were not old enough to intervene or remove themselves from a situation should father become aggressive or paranoid.

We note that the children have consistently stated they are not afraid of father, even though his outbursts make them feel unsafe. Mother also acknowledges that until the most recent incident, when father would have a manic episode, he would leave the children with mother. The only evidence of risk is the concern that because father does not acknowledge he has any mental illness requiring medication, if father is manic or paranoid when he has custody of the children, he might place their safety at risk by his actions. The dependency court thought there was enough evidence that this risk of harm was not speculative, and we agree. A court need not wait for harm to occur before exercising dependency jurisdiction. (*In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 993.) We reject father's argument that the jurisdictional finding was unsupported by substantial evidence.

We find the facts of this case more analogous to *Travis C.*, where a jurisdictional finding was affirmed, than to *In re A.L.*, *Joaquin C.*, or *James R.*, where the appellate court reversed the court's jurisdictional findings, concluding that despite ample evidence of mental illness, there was no evidence that the minors were at any risk of harm. In *Travis C.*, mother suffered from delusions, where she believed the children were being manipulated by the government and that law enforcement was following her. Mother lived with maternal grandparents, who were able to intervene to care for the children, and even removed the children from the home when mother threatened suicide.

Nevertheless, mother threatened to move out of the grandparents' home, and she would drive alone with the children in the car while experiencing symptoms of her mental illness. (13 Cal.App.5th at pp. 1221–1222.) There was evidence that mother had experienced psychotic episodes where she heard voices and believed she was being stalked. Mother's treating psychiatrist expressed concern about the children's safety if mother was off her medications. Mother argued that jurisdiction was not warranted because any risk of harm to the children was speculative. The appellate court rejected mother's argument, noting that where there was evidence that mother's illness and her failure to take medication had already placed the children at risk of harm, the social service agency's "inability to precisely predict how Mother's illness will harm [the children] does not defeat jurisdiction." (*Id.* at p. 1226.)

We find *In re A.L.*, distinguishable because the children in that case were older and the other parent lived in the home. In that case, mother showed signs of mental illness three years earlier and spent six months being treated in a mental institution. When mother returned home, she refused to take her medication and hid it from father because she suspected him of poisoning her. She spent most of her time alone in her bedroom, and her teenage children had no concerns that she might harm them. The Department became involved after an episode where mother suspected her milk was poisoned. When father and the children tried to explain to her that no one was trying to

poison her, she started throwing objects, including a shoe that hit her daughter on the arm or the head. The daughter denied mother was trying to hit her. The son restrained mother while father called law enforcement. Mother was placed on an involuntary hold. Speaking to the social worker the next day, she denied throwing anything, and became agitated and accusatory towards father and the social worker, believing they were trying to kill her. (18 Cal.App.5th at pp. 1046–1048.) The appellate court concluded jurisdiction was not warranted, noting that no one was injured after mother stopped taking her medications, the family took appropriate steps in calling law enforcement, and there was no reason to believe the family would be unable to safely handle future problems. (*Id.* at p. 1051.)

In *Joaquin C.*, the mother was paranoid and delusional at times, but whatever mental problems mother had, "there was no evidence that they impacted her ability to provide adequate care for her son." (15 Cal.App.5th at p. 563, fn. omitted.) During multiple visits by social workers, the infant was observed to be happy, well groomed, and strongly bonded with mother, and the home and mother's room were clean and organized, with sufficient food. The Department had "provided ample evidence of [mother's] mental illness, but it did not prove that her condition rendered her unable to adequately supervise, protect, or provide regular care for her son." (*Id.* at p. 564.) The trial court in *Joaquin C.* relied on mother's willingness to engage in services and her agreement that treatment was needed as evidence to support

its exercise of jurisdiction. The appellate court disagreed, reasoning that mother's willingness to participate in mental health services did not constitute evidence of risk that she could not provide safe and adequate care for her child. The appellate court noted: "From the record before us [mother's] willingness to accept mental health services did not include an acknowledgment that she was a risk to [the child] or that she was unable to provide care for him. Throughout the dependency proceeding she maintained that she was providing excellent care to her son. We caution against treating a parent's willingness to accept services as evidence or an admission that the parent cannot provide adequate supervision, protection, and care. Such a practice would compel parents to refuse all family preservation services or risk being deemed to have conceded dependency jurisdiction over their children, an outcome antithetical to the purpose of providing these services." (*Ibid.*, fn. omitted.)

The appellate court in *James R.*, also reversed a jurisdictional finding, reasoning that "[a]ny causal link between [mother's] mental state and future harm to the minors was speculative." (176 Cal.App.4th at p. 136.) In that case, mother was hospitalized after she took eight ibuprofen together with a few beers. Evidence established that mother had suffered from depression in the past and had not complied with the recommendations of health care providers. While mother admitted it was a mistake to combine the ibuprofen with alcohol, she denied she was depressed or suicidal, and there was no evidence that she

had been found to be a danger to self or others since the birth of her three very young children. A psychologist and a social worker testified mother was not suicidal. (*Id.* at p. 133.) While there some evidence of concerns about mother's mental health, mother would not authorize the release of her medical information. The appellate court concluded that on the record before it, any concern about future harm to the children was speculative. (*Id.* at p. 136.)

Removal order

The decision to remove a child from parental custody is only authorized when a dependency court finds, by clear and convincing evidence, that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's [or] guardian's . . . physical custody." (§ 361, subd. (c)(1).) "A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 ["focus of the statute is on averting harm to the child"].) The court has authority to remove custody from one parent when two parents share joint custody. (*In re Michael S.* (2016) 3 Cal.App.5th 977, 984–986.)

"'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child. [Citation.]' [Citations.]" (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) "The court may consider a parent's past conduct as well as present circumstances." (*In re N.M.* (2011) 197 Cal.App.4th 159, 170.) "[C]ourts have recognized that less drastic alternatives to removal may be available in a given case including returning a minor to parental custody under stringent conditions of supervision by the agency such as unannounced visits." (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 148.)

"The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial." (*In re E.B.* (2010) 184 Cal.App.4th 568, 578; see also *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451 [substantial evidence review applies on appeal, even for issues the trial court decides on clear and convincing evidence].)

The same evidence that supports the court's jurisdictional finding also provides substantial evidence in support of the order removing the children from father's custody. Father argues that there were reasonable means to prevent removal which the court did not consider, such as orders directing no contact and no disparaging remarks between the parents. This argument ignores that the basis for the court's removal order was not conflict between the

parents, but father's behavior when he was in a manic state, and his unwillingness to discuss the possibility that he might be suffering from bipolar disorder. After interviewing father on October 14, 2018, two days before the hearing, the Department concluded that even if father was evaluated and diagnosed, he would not follow through with treatment and medication. Father's argument on appeal does not convince us that the court erred in finding there were no reasonable means to protect the children without removing them from father's custody.

DISPOSITION

The court's jurisdictional finding and dispositional orders are affirmed.

MOOR, J.

We concur:

RUBIN, P. J.

KIM, J.